

Assembly Bill No. 1773

CHAPTER 574

An act to add Chapter 6.5 (commencing with Section 66450) to Part 40 of the Education Code, relating to intellectual property.

[Approved by Governor September 22, 2000. Filed
with Secretary of State September 23, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1773, Romero. Intellectual property: ownership by public postsecondary faculty.

Existing case law provides that in the absence of evidence of agreement to the contrary, a teacher, rather than the institution for which he or she teaches, owns the common law copyright to his or her lectures.

This bill would prohibit any business, agency, or person from preparing, causing to be prepared, giving, selling, transferring, or otherwise distributing or publishing, any contemporaneous recording of an academic presentation, as defined.

The bill would permit any court of competent jurisdiction to grant relief that it finds necessary to enforce its provisions, including the issuance of an injunction and the recovery, from a nonstudent, of court costs, attorney's fees, and a civil penalty, as specified.

The bill would request the Regents of the University of California and the governing boards of private postsecondary institutions, would require the Trustees of the California State University, and would authorize the governing board of each community college district to develop policies to prohibit unauthorized recording and to adopt or provide for the adoption of specific regulations governing a violation of these provisions by students, along with applicable penalties for a violation of the regulations, and to also adopt procedures to inform all students of those regulations.

The provisions of this bill, under existing law, would only apply to the Regents of the University of California to the extent that the regents, by appropriate resolution, make those provisions applicable.

The people of the State of California do enact as follows:

SECTION 1. Chapter 6.5 (commencing with Section 66450) is added to Part 40 of the Education Code, to read:

CHAPTER 6.5. UNAUTHORIZED RECORDING, DISSEMINATION, AND PUBLICATION OF ACADEMIC PRESENTATIONS FOR COMMERCIAL

PURPOSES

66450. (a) Except as authorized by policies developed in accordance with subdivision (a) of Section 66452, no business, agency, or person, including, but not necessarily limited to, an enrolled student, shall prepare, cause to be prepared, give, sell, transfer, or otherwise distribute or publish, for any commercial purpose, any contemporaneous recording of an academic presentation in a classroom or equivalent site of instruction by an instructor of record. This prohibition applies to a recording made in any medium, including, but not necessarily limited to, handwritten or typewritten class notes.

(b) Nothing in this section shall be construed to interfere with the rights of disabled students under law.

(c) As used in this section:

(1) “Academic presentation” means any lecture, speech, performance, exhibit, or other form of academic or aesthetic presentation, made by an instructor of record as part of an authorized course of instruction that is not fixed in a tangible medium of expression.

(2) “Commercial purpose” means any purpose that has financial or economic gain as an objective.

(3) “Instructor of record” means any teacher or staff member employed to teach courses and authorize credit for the successful completion of courses.

66451. (a) Any court of competent jurisdiction may grant relief that it finds necessary to enforce this chapter, including the issuance of an injunction. Any person injured by a violation of this chapter, in addition to actual damages, may recover court costs, attorney’s fees, and a civil penalty from any person who is not a student enrolled in the institution at which the instructor of record makes his or her academic presentation and who seeks to obtain financial or economic gain through the unauthorized dissemination of the academic presentation. The amount of the civil penalty shall not exceed one thousand dollars (\$1,000) for the first offense, five thousand dollars (\$5,000) for the second offense, and for any subsequent offense, a penalty of not less than ten thousand dollars (\$10,000) or more than twenty-five thousand dollars (\$25,000).

(b) Actions for any relief pursuant to this chapter may be prosecuted in a court of competent jurisdiction by the Attorney General or any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city, or city and county, in the name of the

people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation, or association or by any person acting for the interests of itself, its members, or the general public.

(c) It does not constitute a violation of this chapter for a business, agency, or person solely to provide access or connection to or from a facility, system, or network over which that business, agency, or person has no control, including related capabilities that are incidental to providing access or connection. This subdivision does not apply to a business or agency that is owned by, or to a business, agency, or person that is controlled by, or a conspirator with, a business, agency, or person actively involved in the creation, editing, or knowing distribution of a contemporaneous recording that violates this chapter.

66452. (a) The Regents of the University of California and the governing boards of private postsecondary institutions are requested to, the Trustees of the California State University shall, and the governing board of each community college district may, in consultation with faculty, in accordance with applicable procedures, develop policies to prohibit the unauthorized recording, dissemination, and publication of academic presentations for commercial purposes. Nothing in this chapter is intended to change existing law as it pertains to the ownership of academic presentations.

(b) The Regents of the University of California and the governing boards of private postsecondary institutions are requested to, the Trustees of the California State University shall, and the governing board of each community college district may, adopt or provide for the adoption of specific regulations governing a violation of this chapter by students, along with applicable penalties for a violation of the regulations. The regents are requested to, the trustees shall, and the governing board of each community college district may, adopt procedures to inform all students of those regulations, with applicable penalties, and any revisions thereof.

